

## **REMARKS**

The following remarks are in response to the Election of Species Requirement dated March 22, 2006.

### **Summary of Election of Species Requirement**

In the Election of Species Requirement dated March 22, 2006, the Examiner indicated that the subject application contains claims directed to the following patentably distinct species of the claimed invention:

Species I.      Claims 1-20;

Species II.     Claims 21-26; and

Species III.    Claims 27-33.

In view of the above, the Examiner has requested that Applicant elect a single species for prosecution on the merits.

### **Election of Species**

In response to the Election of Species Requirement, Applicant hereby elects, with traverse, the invention designated by the Examiner as Species III, namely claims 27-33, for prosecution on the merits.

Notwithstanding the above election, Applicant respectfully submits that the present Election of Species Requirement is in error. As noted in MPEP § 803, an application may be properly restricted to one of two or more claimed inventions only if such claimed inventions are able to support separate patents and they are either independent (MPEP § 806.04-§ 806.04(i)) or distinct (MPEP § 806.5 - § 806.05(i)). This section further states that “examiners must provide reasons and/or examples to support [his/her] conclusions.”

In this case, the Examiner has failed to provide any reason why the grouped inventions are independent or distinct from each other. The Examiner has merely supplied a conclusory statement that the grouped claims are independent or distinct, without any indication as to what basis the claims are being separated into these three (3) specific groups.

Additionally, no reason has been provided why the Examiner would be seriously burdened if restriction is not required. Pursuant to MPEP § 803, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinctive inventions. This section also states that “a serious burden on the examiner may be *prima facie* shown by appropriate

explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.” At a minimum, since there is no explanation regarding the aforementioned search criteria, the Examiner has failed to establish a *prima facie* case that she would be seriously burdened.

Moreover, contrary to the Examiner’s position, Applicant asserts that independent claims 12 and 20 are generic to all of the embodiments disclosed in the specification and drawings of the subject application. As noted by the Examiner, upon the allowance of a generic claim, Applicant will be entitled to consideration of additional species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

For the foregoing reasons, Applicant asserts that the present Election of Species Requirement is improper and requests reconsideration of same.

#### **New Claims**

In the present Amendment, Applicant introduces new claims 34-40. These new claims are fully supported by the subject application as filed and are drawn to the elected species (i.e., Group III, claims 27-33).

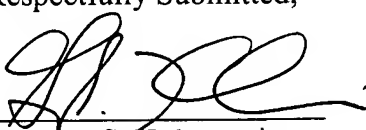
#### **Conclusion**

The Commissioner is authorized to charge any additional fees or credit any overpay to Deposit Account No. 02-2051, specifically identifying Docket No. 23156-151.

Respectfully Submitted,

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